

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ILA LAFRENTZ, JIM LAFRENTZ,))
KATHERINE PORTERFIELD, AND))
WILLIAM LAFRENTZ,))
Individually And as))
Representative of the))
Estate of JAMES B.))
LAFRENTZ,))
Plaintiffs,))
vs.) NO. 4:18-cv-04229)
3M COMPANY, AND GENERAL))
DYNAMICS CORPORATION,))
Defendants.))

REMOTE ORAL AND VIDEOTAPED DEPOSITION

DARRELL BEVIS

Taken on behalf of Defendants

December 2, 2020

Sandy A. Treft, CSR, RPR

Certified Shorthand Reporter

Texas CSR #

Page 50	Page 52
<p>1 fit check test that have been done by 3M internally and 2 have been produced in this litigation? 3 A. I've never seen the list that 3M has presented 4 to show that they did these tests. I know they had 5 (inaudible) -- 6 Q. Mr. Bevis, when you bend over we can't hear 7 you. 8 A. Yes, yes, I stopped speaking when I bent over. 9 Okay. I didn't say anything so you didn't miss 10 anything. 11 You know, I'm not sure what all 3M might 12 have tried. 13 Q. Okay. 14 A. I mean, you go to the height of the ridiculous 15 and there you find some of the things that 3M does to 16 get a respirator approved, such as cleaning a respirator 17 by blowing the reverse direction, a collection of the 18 contaminant with compressed air so that it could be 19 classed a half mask respirator. 20 Q. Have you ever conducted a study on the 21 effectiveness on the positive pressure fit check on the 22 3M 8710? 23 A. Many, many, many, many times. 24 Q. Have you ever published any of that data that 25 have you?</p>	<p>1 Q. You took the position one time in a deposition 2 that you considered it your role as an expert witness to 3 help the plaintiff win. Do you still take that 4 position? 5 A. When I take a case -- I mean, that's something 6 that you try to make it look bad. But any consultant 7 who takes a case for a plaintiff has to believe that 8 that plaintiff has been hurt or wronged by a 9 manufacturer, in this case respirators and 3M. 10 And I am totally convinced that anybody 11 wearing a single use respirator including our poor 12 healthcare people for TB using the same filtering face 13 pieces are being hurt by a terrible designed respirator 14 because tiny particles are going to leak into the face 15 piece and the fabric or paper or -- since the employees 16 call it paper, I frequently refer to it as paper, 17 although, I know it's a blown web. 18 But paper doesn't form a seal to the face. 19 Neither does the polypropylene blown web form a seal to 20 the face. 21 Q. Do you consider yourself an advocate for the 22 plaintiff then? 23 A. No. I consider myself an asset to the 24 plaintiff because of my knowledge of respirators and 25 particularly in the -- in the case of the 8710 I know of</p>
Page 51	Page 53
<p>1 A. No, I have not. All I was doing was satisfying 2 myself that it was as ridiculous as it looked. 3 Q. Did you present that information to OSHA when 4 you testified in California when they were doing the 5 2006 rule change? 6 A. Oh, I probably did. I can't remember 7 specifically when it was that I testified to at that 8 point. 9 Q. And does OSHA consider the fact that you can 10 use the manufacturer's recommended procedure to do the 11 fit check on both the 8710 and the 8210 which is 12 currently on the market? 13 A. They didn't do that until 1996 I think without 14 the comment that it must be as effective as the accepted 15 negative and positive pressure tests. 16 Q. And have they made a determination and allowed 17 3M 8710 to continue on the market up until the time it 18 was taken off, the 8210 still be marketed? 19 A. OSHA has nothing to do with allowing 20 respirators be on the market or not. 21 Q. Well, if OSHA says that it's not acceptable for 22 use by employees that are working in the workplace, they 23 could say it's not an accepted respirator, correct? 24 A. If OSHA writes citations, then it's not an 25 accepted respirator.</p>	<p>1 no one who outside of 3M saw these respirators earlier 2 than I and Ed Hyatt when they were brought to Los Alamos 3 and we told them this is ridiculous. These things will 4 never provide protection. We were careful not to say 5 would never be approved because we know the politics of 6 the system. 7 Q. Did you know that Ed Hyatt was a consultant for 8 3M and helped with the quality control program? 9 A. Oh yes, I did. I knew. He didn't help design. 10 He didn't agree with protection factors of 10 or 11 anything else. He helped them with one phase which was 12 quality control. And that's because 3M had a real 13 quality control problem and NIOSH was ready to withdraw 14 the approval if they didn't correct that. 15 Q. So you're saying Ed Hyatt didn't believe in the 16 respirator, but yet he went to work for 3M as a 17 consultant after he retired from Los Alamos and that he 18 helped put together a quality control program and he did 19 other consulting work besides that. You are aware of 20 that, aren't you, Mr. Bevis? 21 A. Absolutely I am aware of that and I have no 22 doubt that Ed fully believed as he always did that that 23 respirator used for a protection factor of five probably 24 wouldn't kill anybody. 25 Q. Is there anywhere at any point in time in</p>

<p style="text-align: right;">Page 90</p> <p>1 MR. WEBB: Objection. Nonresponsive. 2 Q. (BY MR. WEBB) You make the implication -- let me 3 just read it and make sure that we're on the same page. 4 When you say these four design features, you're talking 5 about the 8710, correct? 6 A. That is correct. 7 Q. Require that NIOSH ignore, that's not saying 8 that they took into consideration and made a 9 determination. You're saying ignored testing and design 10 requirements. They're not something that they can just 11 pass off, but you said testing and design requirements 12 in sub part K of 30 CFR, Part 11 to approve the 13 sub-standard if they're not able to meet the standards 14 and that means they're not meeting the requirements of 15 the 30 CFR, Part 11, right? 16 A. You know what, you interrupt it any way you 17 want to interpret it, but what I'm saying is that they 18 made requirements for other respirators that the 8710 or 19 any other filtering face piece respirator could not meet 20 so they did not require them for making approval. 21 Now, is that right or wrong, I don't know, 22 but I would -- to me that says they made special 23 provisions, but you interpret it however you want to 24 interpret it. 25 Q. Let's take a five minute break.</p>	<p style="text-align: right;">Page 92</p> <p>1 presented to the jury and we read those parts that all 2 of the jury will understand. 3 Q. Well, but what you put down, the paper is 4 incorrect and would be misleading to the jury, wouldn't 5 it? 6 MR. PEEK: Form. 7 THE WITNESS: No, because they think it's 8 paper anyway. If we say fabric, if we say fiber, 9 they're going to think the same. So I put what I 10 intended there. 11 Q. (BY MR. WEBB) Okay. So you intended to put down 12 paper which you know is incorrect. You put down fabric 13 which you know is incorrect; is that correct? 14 A. I put it down there so I can talk to the people 15 I need to talk to, yes. 16 Q. So you're going to provide misleading 17 information to the jurors if you tell them that it's 18 paper and it's fabric? 19 MR. PEEK: Form. 20 THE WITNESS: Absolutely not. I will be 21 talking to them in terms that they're used to. 22 Q. (BY MR. WEBB) Even if those terms are incorrect? 23 MR. PEEK: Form. 24 THE WITNESS: Even if those terms are 25 incorrect. You're talking to what is this and then you</p>
<p style="text-align: right;">Page 91</p> <p>1 A. I'm sorry? 2 Q. We're going to take a five minute break. 3 THE VIDEOGRAPHER: We are off the record 4 at 1:58 p.m. Central Standard Time. 5 (Recess from 1:58 p.m. to 2:06 p.m.) 6 THE VIDEOGRAPHER: We are back on the 7 record at 2:06 p.m. Central Standard Time. 8 MR. WEBB: Will you pull it up a little 9 further please where it says face piece? 10 Q. (BY MR. WEBB) Mr. Bevis, what is the made of 11 paper, slash, fabric, slash, fiber mean? 12 A. That's so when I talk to a jury the jury 13 understands what we're talking about. If I say it's 14 made of fiber or fiber filter media, the polypropylene 15 falls into that category. And I'm simply talking in 16 terms that they will understand. So I made sure we got 17 the fabric and the fiber filter media in there. 18 Q. So it's not made of paper, correct? 19 A. Not made of paper. 20 Q. And it's not made of fabric, is it? 21 A. No, sir. 22 Q. All right. So basically this should read made 23 of fiber filter media? 24 A. You interpret that any way that you want to. 25 I've put down what I want so that when this report is</p>	<p style="text-align: right;">Page 93</p> <p>1 compare that to this elastomeric and you say would you 2 really go into a hazardous material with this thing no 3 matter what it's made of? 4 And I'll tell you now that the 5 manufacturer wants us to say that it's a fiber filter 6 media so we'll say that, but look at this, this is 7 rubber and this actually will form a seal, how about 8 this or this. 9 Q. (BY MR. WEBB) Is this -- are you going to show 10 them the OSHA 2006 report that said that the 3M 8710 was 11 better than the elastomeric that was rated with a 10 or 12 actually -- 13 A. That is not what OSHA said. 14 Q. Oh yes, that's exactly what OSHA said. 15 A. No, that is what you folks put in there. 16 Q. No. Didn't OSHA find that based upon their 17 review that the 3M 8710, those type respirators were 18 actually better than the elastomeric? 19 MR. PEEK: Form. 20 THE WITNESS: No, they did not. 21 Q. (BY MR. WEBB) Okay. 22 A. Okay. I'd be happy to discuss that if you want 23 to discuss it. 24 Q. I think we'll wait and do that in front of a 25 jury, thank you.</p>

<p style="text-align: right;">Page 102</p> <p>1 A. No, I thought you said the others -- I had just 2 said we developed the first quantitative fit testing. I 3 and three others at Los Alamos. 4 Q. Okay. What I'm asking you is -- 5 A. You're good at twisting my words. 6 Q. What I'm asking you is it says evaluations of 7 the test methodology by me, that's the saccharine test 8 methodology, right? 9 A. Right, right. 10 Q. Who are the others that did the saccharine 11 testing? 12 A. How about Nelson Liddell of NIOSH. 13 Q. Okay. Who else? 14 A. Chingtsen Bien, private consultant, respirator 15 expert. 16 Q. Who else? 17 A. Those are two other experts. There aren't many 18 respirator experts out there. And oh, by the way, 19 Chingtsen Bien was with OSHA. And that's 20 C-h-i-n-g-t-s-e-n B-i-e-n for the court reporter. 21 THE REPORTER: Thank you. 22 Q. (BY MR. WEBB) On Page 5 at the bottom where it 23 says paper fabric, that's also incorrect, correct? 24 A. Oh yeah, yeah. That's talking again in terms 25 of people's belief, so that's incorrect.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes, sir. 2 Q. The subject respirators did not provide 3 sufficient protection to prevent inhalation exposure of 4 Mr. LaFrentz to very substantial amounts of airborne 5 respirable asbestos fibers. What is a substantial 6 amount? 7 A. Absolutely. You know, that's a question that 8 everybody asks, What is a substantial amount? If you 9 have a substance that is carcinogenic that means it 10 causes cancer. How much does it -- of a carcinogen does 11 it take to cause that cancer and when you can define 12 that, then that's a substantial amount. 13 Now, in this case with Mr. LaFrentz based 14 on what we -- our testing as much as 25 percent of the 15 outside concentration is going to get inside the 16 respirator. And that was published in Los Alamos 17 documents. So 25 percent of the outside is a 18 substantial amount. 19 Q. I thought you said it had a protection factor 20 of five? 21 DEFENSE COUNSEL: Objection. 22 Nonresponsive. 23 THE WITNESS: I'm sorry? 24 Q. (BY MR. WEBB) I thought you said it had a 25 protection factor of five?</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. So this sentence here says it's impossible to 2 produce a sufficient positive or negative pressure 3 inside the face piece when the face piece seal is paper 4 or fabric. That -- 5 A. Those -- 6 Q. Let me finish my question before you start 7 answering, please. 8 A. Okay. 9 Q. So that whole sentence is incorrect because you 10 say it's paper fabric. It's not paper fabric; it's 11 polypropylene micro blown fibers, correct? 12 A. Micro blown, no. It's blown micro fibers, not 13 micro blown. But it is blown micro fibers and that 14 is -- 15 THE WITNESS: Brad, should I note that -- 16 should I make a revision to the report? 17 Q. (BY MR. WEBB) We'll talk about -- 18 A. I made an error and I put paper in there and 19 should have -- huh? 20 MR. PEEK: We can discuss that later. 21 You're doing fine. 22 THE WITNESS: Okay. Okay. That sounds 23 good. 24 Q. (BY MR. WEBB) And at the last page of the 25 report, Page 6.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. If it had a protection factor of five, I said 2 remember that is the worse case scenario for the fifth 3 percentile. That means that 95 percent of the people 4 are going to get that or better, but there's 5 percent 5 that they might get a whole lot worse. 6 DEFENSE COUNSEL: Objection. 7 Nonresponsive. 8 THE WITNESS: I thought I explained it 9 pretty well. 10 Q. (BY MR. WEBB) You can't define for me what very 11 substantial amount is in this sentence? 12 A. A substantial amount would be certainly 13 25 percent as we showed at Los Alamos, 25 percent of 14 whatever is outside particularly with a carcinogen. 15 Q. Okay. Let me look over my notes. I think I'm 16 pretty close to being finished. 17 Mr. Bevis. 18 A. Yes. 19 Q. What percentage of your current income is from 20 litigation and expert testimony? 21 A. Somewhere in the neighborhood of -- in normal 22 times 40 percent to 50 percent, however, these are not 23 normal times and the wells rather dry so I can't really 24 say. 25 I'm doing some local work probably -- I'm</p>